

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE:

EASTERN LIVESTOCK CO., LLC

CASE NO. 10-93904
CHAPTER 11

DEBTOR

**RESERVATION OF RIGHTS AND OBJECTION TO FIFTH INTERIM
APPLICATION OF JAMES A. KNAUER FOR COMPENSATION AND
REIMBURSEMENT OF EXPENSES AS CHAPTER 11 TRUSTEE**

Come Alton Darnell, East Tennessee Livestock Center, Inc., Moseley Cattle Auction, LLC, Piedmont Livestock Company, Inc., and Southeast Livestock Exchange, LLC (collectively, the “Creditors”), by counsel, and hereby object on an interim basis and reserve for the final fee application all objections to the allowance of fees and expenses of James A. Knauer, Chapter 11 Trustee for the Estate of Eastern Livestock Co., LLC (the “Trustee”). In support of this Reservation of Rights and Interim Objection, the Creditors respectfully state as follows:

BACKGROUND

1. On December 27, 2010, after consideration of the Notice of Appointment and Application for Order Approving Appointment of Trustee [Doc 98] and the accompanying Trustee’s Verified Statement and Notice of Acceptance [Doc 98-1] and Affidavit of Disinterest [Doc 98-2], the Court entered the Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee [Doc 102] in the above-captioned bankruptcy case.

2. On June 3, 2011, the Trustee filed his First Interim Application for Compensation and Reimbursement of Expenses as Chapter 11 Trustee [Doc 525] (the “First Interim

Application”). This Application was approved on an interim basis by an Interim Order of this Court entered on July 15, 2011 [Doc 605].

3. On November 10, 2011, The Trustee filed his Second Interim Application for Compensation and Reimbursement of Expenses as Chapter 11 Trustee [Doc 816] (the “Second Interim Application”). This Application was approved on interim basis by an Interim Order of this Court entered on December 21, 2011 [Doc 925].

4. On November 21, 2012, the Trustee filed his Third Interim Application for Compensation and Reimbursement of Expenses as Chapter 11 Trustee [Doc 1556] (the “Third Interim Application”). This Application was approved on interim basis by an Interim Order of this Court entered on December 20, 2012 [Doc 1667].

5. On March 20, 2013, the Trustee filed his Fourth Interim Application for Compensation and Reimbursement of Expenses as Chapter 11 Trustee [Doc 1907] (the “Fourth Interim Application”). This Application was approved on an interim basis by an Interim Order of this Court entered on October 1, 2013 [Doc 2374].

6. On October 24, 2013, the Trustee filed his Fifth Interim Application for Compensation and Reimbursement of Expenses as Chapter 11 Trustee [Doc 2402] (the “Fifth Interim Application”), which is at issue herein.

OBJECTION AND RESERVATION OF RIGHTS

7. For reasons previously stated, the Creditors continue in their objections to the allowance of fees and expenses for the Trustee on both an interim and final basis. Due to undisclosed written agreements entered into by the Trustee which significantly limited the Trustee as the sole representative of the Estate, the Trustee’s nondisclosure from the first days of

the case taints all fee applications, which remain subject to final objection and final review at the time of the filing of a final application.

8. To the extent that the Court enters an interim order approving the Fifth Interim Application, the order will not be a final approval of the fees or expenses. *See Matter of Taxman Clothing Co.*, 49, F.3d 310, 312 (7th Cir. 1995) (“The law is clear . . . that all interim awards of attorney’s fees in bankruptcy cases are tentative.”) (citations omitted); *In re Eckert*, 414 B.R. 404, 409 (Bankr. N.D. Ill. 2009) (“Interim fee awards under 11 U.S.C. § 331 are discretionary and are subject to reexamination and adjustment during the course of the case The Court may review the case at its conclusion and take into account the results obtained in making a final allowance.”) (citations omitted); *In re Gibson*, 2010 WL 774573, *10 (Bankr. C.D. Ill. 2010) (interim orders allowing fee applications are subject to further review and modification by court) (citations omitted). The same is true of all prior interim applications.

9. Against this background, a lengthy objection to the Fifth Interim Application is not required at this interim stage. The Creditors reserve any and all rights to object to the final fee application filed by the Trustee in this Bankruptcy Case.

10. If the Court grants an interim allowance, before any payment of same, the Trustee should be ordered and directed to provide additional information to the creditor body on more current Estate information and updated estimated creditor distributions.

Respectfully submitted,

DELCOTTO LAW GROUP PLLC

/s/ Laura Day DelCotto, Esq.

200 North Upper Street

Lexington, Kentucky 40507

Telephone: (859) 231-5800

Facsimile: (859) 281-1179

ldelcotto@dlgfirm.com

COUNSEL FOR THE PARTIES

CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2013, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

David L. Abt

davidabt@mwt.net

Amelia Martin Adams

aadams@dlgfirm.com

John W. Ames

james@bgdlegal.com

Jerald I. Ancel

jancel@taftlaw.com; krussell@taftlaw.com

ecfclerk@taftlaw.com

Kay Dee Baird

kbaird@kdlegal.com; pdidandeh@kdlegal.com

Christopher Baker

cbaker@thbklaw.com; thignight@thbklaw.com;

twilkerson@thbklaw.com

Robert A. Bell

rabell@vorys.com

C. R. Bowles, Jr.

cbowles@bgdlegal.com

David W. Brangers

dbrangers@lawyer.com

Lisa Koch Bryant

courtmail@fbhlaw.com

Steven A. Brehm

sbrehm@bgdlegal.com

Kent A. Britt

kabritt@vorys.com

Kayla D. Britton

kayla.britton@faegrebd.com;

cindy.wondra@faegrebd.com;

sarah.herendeen@faegrebd.com

Joe Lee Brown

joe.brown@hardincounty.biz

John R. Burns, III

john.burns@faegrebd.com; sandy.rhoads@faegrebd.com;

oliana.nansen@faegrebd.com

John R. Carr, III

jrciii@acs-law.com; sfinnerty@acs-law.com

Deborah Caruso

dcaruso@daleeke.com; lharves@daleeke.com

mthomas@daleeke.com

Ben T. Caughey

ben.caughey@icemiller.com

Bret S. Clement	bclement@acs-law.com ; sfinnerty@acs-law.com
Joshua E. Clubb	joshclubb@gmail.com
Jason W. Cottrell	jwc@stuartlaw.com
Kirk Crutcher	kcrutcher@mcs-law.com;jparson@mcs-law.com
	cmarshall@mcs-law.com
Jack S. Dawson	jdawson@millerdollarhide.com;
	jseeger@millerdollarhide.com;
	receptionist@millerdollarhid.com;
	chall@millerdollarhide.com
Laura Day DelCotto	ldelcotto@dlgfirm.com ; dlgecf@dlgfirm.com
	dlgecf@gmail.com
Dustin R. DeNeal	dustin.deneal@faegrebd.com
	Patricia.moffit@bakerd.com
David Alan Domina	dad@dominalaw.com ; KKW@dominalaw.com
	efiling@dominalaw.com
Daniel J. Donnellon	ddonnellon@ficlaw.com ; knorwich@ficlaw.com
Jesse Cook-Dubin	jcookdubin@vorys.com ; vdarmstrong@vorys.com
Trevor L. Earl	tearl@rwsvlaw.com
Shawna M. Eikenberry	shawna.eikenberry@faegrebd.com
Jeffrey R. Erler	jeffe@bellnunnally.com
William K. Flynn	wkflynn@strausstroy.com;fmtuttle@strausstroy.com;
	rlshapiro@strausstroy.com
Robert Hughes Foree	robertforee@bellsouth.net
Sandra D. Freeburger	sfreeburger@dsf-atty.com ; smattingly@dsf-atty.com
Peter M. Gannott	pgannott@gannottlaw.com;paralegal@gannottlaw.com;
	gannottlaw@gmail.com
Darla J. Gabbitas	Darla.gabbitas@moyewwhite.com
Melissa S. Giberson	msgiberson@vorys.com
Thomas P. Glass	tpglass@strausstroy.com
Jeffrey J. Graham	jgraham@taftlaw.com
Patrick B. Griffin	Patrick.griffin@kutakrock.com;
	Stephanie.brockman@kutakrock.com
Terry E. Hall	terry.hall@faegrebd.com
Paul M. Hoffmann	phoffman@stinson.com
John David Hoover	jdhoover@hooverhull.com
John Huffaker	john.huffaker@sprouselaw.com
	lynn.acton@sprouselaw.com
	rhonda.rogers@sprouselaw.com
Jeffrey L. Hunter	Jeff.Hunter@usdoj.com
Jay Jaffee	jay.jaffee@faegrebd.com
James Bryan Johnston	bjtexas59@hotmail.com ; bryan@ebs-law.net
Todd J. Johnston	tjohnston@mcjllp.com
David Jones	david.jones@sprouselaw.com
Jill Z. Julian	Jill.Julian@usdoj.com
Jay P. Kennedy	jpk@kgrlaw.com;tfoelich@kgrlaw.com;
	ads@kgrlaw.com; jli@kgrlaw.com

Edward M. King	tking@fbtlaw.com ; dgioffe@fbtlaw.com
James A. Knauer	jak@kgrlaw.com ; hns@kgrlaw.com
Erick P. Knoblock	eknoblock@daleeke.com
Theodore A. Konstantinopoulos	ndohbky@jbandr.com
David A. Laird	david.laird@moyewwhite.com ; lisa.oliver@moyewwhite.com
	deanne.stoneking@moyewwhite.com
Randall D. LaTour	rldatour@vorys.com ; khedwards@vorys.com
David L. LeBas	dlebas@namanhowell.com ; koswald@namanhowell.com
Martha R. Lehman	mlehman@kdlegal.com ; crbpgpleadings@kdlegal.com ;
	brequenes@kdlegal.com
Scott R. Leisz	sleisz@bgdlegal.com ; disom@bgdlegal.com
Elliott D. Levin	robin@rubin-levin.net ; edl@trustesolutions.com ;
	atty_edl@trustesolutions.com
Kim Martin Lewis	kim.lewis@dinslaw.com ; lisa.geeding@dinslaw.com
	patrick.burns@dinslaw.com
James B. Lind	jblind@vorys.com
Karen L. Lobring	lobring@msn.com
John Hunt Lovell	john@lovell-law.net ; sabrina@lovell-law.net
Harmony A. Mappes	harmony.mappes@faegrebd.com
John Frederick Massouh	john.massouh@sprouselaw.com
Brian H. Meldrum	bmeldrum@stites.com
Michael W. McClain	mike@kentuckytrial.com
Kelly Greene McConnell	lisahughes@givenspursley.com
James E. McGhee, III	mcghee@derbycitylaw.com
William Robert Meyer, II	rmeyer@stites.com
Kevin J. Mitchell	kevin.mitchell@faegrebd.com ;
	cyndy.maucher@faegrebd.com ;
	oliana.nansen@faegrebd.com
Terrill K. Moffett	kendalcantrell@moffettlaw.com
Christie A. Moore	cmoore@bgdlegal.com
Allen Morris	amorris@stites.com ; dgoodman@stites.com
Judy Hamilton Morse	judy.morse@crowedunlevy.com ; ecf@crowedunlevy.com
	donna.hinkle@crowedunlevy.com ;
	karol.brown@crowedunlevy.com
Erin Casey Nave	enave@taftlaw.com ; ecfclerk@taftlaw.com ;
	aolave@taftlaw.com
Matthew Daniel Neumann	mneumann@hhclaw.com
Walter Scott Newbern	wsnewbern@msn.com
Matthew J. Ochs	matt.ochs@moyewwhite.com ; kim.maynes@moyewwhite.com
Jessica Lynn Olsheski	Jessica.olsheski@gustice-law.net ;
	juliestreich@justice-law.net
Shiv G. O'Neill	shiv.oneill@faegrebd.com
Michael W. Oyler, Esq.	moyler@rwsvlaw.com
Ross A. Plourde	ross.plourde@mcafeetaft.com
	erin.clogston@mcafeetaft.com
Brian Robert Pollock	bpollock@stites.com

Wendy W. Ponader	wendy.ponader@faegrebd.com
Timothy T. Pridmore	Sarah.henderson@bakerd.com
Anthony Raluy	tpridmore@mcjllp.com; lskibell@mcjllp.com
Eric C. Redman	traluy@fbhlaw.net
	ksmith@redmanludwig.com;
	kzwickel@redmanludwig.com; myecfmailrl@gmail.com
Eric W. Richardson	ewrichardson@vorys.com
Joe T. Roberts	jratty@windstream.net
David Cooper Robertson	crobertson@stites.com; docketclerk@stites.com
Mark A. Robinson	mrobinson@vhlaw.com ; dalbers@vhlaw.com
Jeremy S. Rogers	Jeremy.Rogers@dinslaw.com ; Joyce.jenkins@dinslaw.com
Joseph Rogers III	jrogers@millerdollarhide.com;
	cdow@millerdollarhide.com
	johnr@rubin-levin.net ; susan@rubin-levin.net
John M. Rogers	jim@rubin-levin.net
James E. Rossow, Jr	ser@kgrlaw.com
Steven Eric Runyan	asr@blancolaw.com
Ashley S. Rusher, Esq.	nsadowski@thbklaw.com; btaylor@thbklaw.com;
Niccole R. Sadowski	twilkerson@thbklaw.com
	tscherer@binghammchale.com
Thomas C. Scherer, Esq.	seschilling@strausstroy.com
Stephen E. Schilling	ishallcross@bgdlegal.com
Ivana B. Shallcross	Suzanne.shehan@kutakrock.com;
Suzanne M. Shehan	nancy.johnson@kutakrock.com;
	joy.lehnert@kutakrock.com
	jsmith@smithakins.com
James E. Smith	wsmith@k-glaw.com
William E. Smith, III	ads@kgrlaw.com; jli@kgrlaw.com
Amanda Dalton Stafford	robert.stanley@faegrebd.com
Robert K. Stanley	kabritt@vorys.com
Joshua N. Stine	astosberg@lloydmc.com; bmarks@lloydmc.com
Andrew D. Stosberg	indyattorney@hotmail.com; mattstrzynski@mac.com
Matthew R. Strzynski	mtheisen@daleeke.com
Meredith R. Theisen	kevin.toner@faegrebd.com
Kevin Toner	ctrapp@rubin-levin.net
Christopher M. Trapp	ustpreion10.in.ecf@usdoj.gov
U.S. Trustee	clturner@stites.com
Chrisandrea L. Turner	avandiver@aswdlaw.com; sgoins@aswdlaw.com;
Andrew James Vandiver	jrobb@aswdlaw.com
	andrea@wassonthornhill.com
Andrea Wasson	jwatt@kgrlaw.com
Jennifer Watt	sweigand@ficlaw.com
Stephen A. Weigand	Charles.R.Wharton@usdoj.gov
Charles R. Wharton	swhite@hooverhull.com
Sean T. White	Michael.willey@ag.tn.gov
Michael Benton Willey	chad@wuertzlaw.com; joe@wuertzlaw.com;
Chad Duane Wuertz	

Jessica Yates

James T. Young

zach@wuertzlaw.com;Michele@wuertzlaw.com;wendy@wuertzlaw.com

jyates@swlaw.com;docket_den@swlaw.com;

mmccleery@swlaw.com

james@rubin-levin.net; ATTY_JTY@trusteesolutions.com

kim@rubin-levin.com; lemerson@rubin-levin.com

I further certify that on November 13, 2013, a copy of the foregoing pleading was served by first-class U.S. mail, postage prepaid, or by electronic mail as indicated, to the following:

Bovine Medical Associates, LLC
1500 Soper Road
Carlisle, KY 40311
VIA U.S. MAIL

National Cattlemen's Beef Assoc.
c/o Allie Devine, Esq.
allie@devineanddonley.com
VIA EMAIL

Nancy Gargula
Region 8, UST Office
nancy.gargula@usdoj.gov
VIA EMAIL

Tennessee Department of Revenue
c/o TN Attorney General's Office
Bankruptcy Division
P. O. Box 20207
Nashville, TN 37202-0207
VIA U.S. MAIL

/s/ Laura Day DelCotto, Esq.
COUNSEL FOR THE BLUE GRASS
COMPANIES

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